

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.02.2018
CORAM
THE HONOURABLE MR. JUSTICE R. SURESH KUMAR
Crl.A.Nos.72 and 81 of 2018

V.Udayakumar ... Appellant/Accused 1
in Crl.A.72 of 2018

Boobalan ... Appellant/Accused 8/Petitioner
in Crl.A.No.81 of 2018

Vs.

1.State rep.by
The Inspector of Police,
Thirubuvanai Police Station,
Pondicherry,
case transferred to CBCID Police,
Pondicherry. ... 1st Respondent/Complainant
in both appeals

2.Gnanasegaran ... 2nd Respondent/Defacto Complainant
in Crl.A.72 of 2018

Prayer: Criminal Appeals filed under Section 14A of Schedule Caste and Schedule Tribes Act, 1989, to set aside the order passed by the learned Special Judge, II Additional Sessions Judge, Pondicherry, in Crl.M.P.No.16 of 2018 in Sessions Case No.33 of 2017 dated 30.01.2018 and enlarge the appellant/accused-1 on bail in connection with S.C.No.33 of 2017 on the file of the II additional Sessions Judge, at Pondicherry, in Crime No.40 of 2017 dated 19.04.2017 on the file of the Inspector of Police, Thirubuvanai Police Station, Pondicherry, now on the file of CBCID Police, Pondicherry (in Crl.A.72/18) and in Crl.MP.11/18 in S.C.33/17 dt.30.1.2018 passed by the II Additional Sessions Judge, Puducherry and enlarge the Appellant/Petitioner on bail Crime.No.40/17 on the file of the Inspector of Police, Thirubuvanai Police Station, Pondicherry (in Crl.A.81/18).

For Appellants : Mr.Satishkumar for
M.Balavijayan
in Crl.A.No.72 of 2018

Mr.B.Mohan,
in Crl.A.No.81 of 2018

For Respondents: Mr.Bharatha Chakravarthy
Public Prosecutor (Pondicherry)
for R1 in both appeals

COMMON JUDGMENT

This appeal (Crl.A.No.72 of 2018) has been preferred against the order passed in Crl.M.P.No.16 of 2018 in S.C.No.33 of 2017 on the file of the learned II Additional Sessions Judge, Puducherry, in Crime No.40 of 2017 on the file of the Inspector of Police, Thirubuvanai Police Station, Puducherry, (now on the file of the CBCID, Puducherry).

2.The case against the appellant in Crl.A.No.72 of 2018 is that, he is A1 in this appeal, where charge sheet had been filed originally for the offences punishable under Sections 148, 302 of IPC read with 149 and 109 of IPC and Section 3 of the Explosive Substances Act, 1908 and Section 143, 120B, 109, 449, 427 and 302 of IPC read with 149 and Sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908.

3.Subsequently, by further investigation, an additional charge sheet has been filed and thereby, charge has also been laid against the appellant/accused under Sections 3(2)(v) of the SC/ST (Prevention of Atrocities Amendment Act) 2015.

4.This appellant had already moved before this Court seeking bail and on those occasions, this Court had declined to grant the appellant, bail. On fourth occasion, when the appellant had approached this Court, the learned Judge of this Court, by order dated 12.01.2018, has passed an order stating that, charge has also been laid against the appellant under the provisions of the SC/ST Act, by way of supplementary charge sheet and therefore, seeking bail by invoking Section 439 of the Code of Criminal procedure, cannot be invoked before this Court, as the issue of granting bail has to be decided only by the Special Court and if at all, any order passed by the Special Court, an appeal has to be filed before this Court.

5.Also, in the said order, the learned Judge of this Court has observed that in view of the law laid down by the Hon'ble Supreme Court in Prasanta Kumar Sarkar Vs. Ashis Chatterjee and another [2010 14 SCC 436], the case, which was in hand, did not pass muster the law laid down by the Hon'ble Supreme Court in the aforesaid Judgment, warranting grant of bail. Accordingly, the said petition was dismissed on 12.01.2018.

6.Thereafter, it seems that, the appellant has moved before the Special Court, seeking bail, where the learned Judge, after having considered the earlier dismissal of bail petitions by this Court, including the one dated 12.01.2018, has declined to grant bail and by thus, the said petition in Crl.M.P.No.16 of 2018 in S.C.No.33 of 2017 was dismissed on 30.01.2018, as against which, the present appeal in Crl.A.No.72 of 2018 has been preferred.

7. Insofar as CrI.A.No.81 of 2018 is concerned, the appellant (A8 in this appeal) also moved with a similar petition for bail in CrI.M.P.No.11 of 2018 in S.C.No.33 of 2017 and his petition was dismissed by the learned trial Court Judge, by order dated 30.01.2018 stating that the Hon'ble High Court has ceased the matter for the same offences dismissed the bail application filed by the 1st accused on fourth occasion. Considering the above aspects and invoking serious objections raised by the prosecution, the learned Judge has not inclined to grant bail to the appellant/A8 in this case. Against which, he has filed CrI.A.No.81 of 2018.

8. Mr. Sathishkumar, the learned counsel appearing for the appellant in CrI.A.No.72 of 2018 submits that in the charge sheet, though the charges with regard to conspiracy and murder, etc., have been framed by the prosecution against the appellant, showing him as A1 by stating that A1 has got a previous enmity over the victim/deceased, there is no specific charge linking the appellant/A1 with the other accused persons in the charge sheet itself.

9. The learned counsel would also submit that, the statement of one Vaidegi on 20.04.2017 before the respondent police, had only stated that two persons had come and thrown something on the deceased, which blasted and immediately, she ran away from the place. The said Vaidegi is the only eye witness, who had never said about any accused including A4, who, according to the prosecution, was in the scene of occurrence.

10. However, he further submits that in order to pluck the holes, the prosecution has obtained additional statements from Vaidegi, whereby they recorded her statements, as if it was stated by the said witness that A4 thrown something, which he had in his hands, on the victim. Except these statements, no other witness available with the prosecution to link the Appellant/A1 with the other accused persons in order to execute the conspiracy said to have been made between the accused persons including A1.

11. Like that, Mr. B. Mohan, learned counsel appearing for the appellant/A8 in CrI.A.No.81 of 2018, submits that A8 is no way connected with the alleged charges and in the charges itself, according to the prosecution, they have merely stated that A8 is also having previous enmity against the deceased.

12. Per contra, Mr. Bharatha Chakravarthy, learned Public Prosecutor (Pondicherry) appearing for the respondent/State by relying upon the counter filed by them, submits that, series of crimes were committed by the accused persons including the

appellant herein and even though the appellants had been arrested in the month of April 2017 and had been inside for all these period, still some tension prevails in the locality and if at all, the appellants are enlarged on bail, there would be a likelihood of law and order problem in that locality and moreover, the appellants/accused persons, if they are let out on bail, would tamper the evidences. Therefore, the learned Public Prosecutor opposed the release of these two persons on bail.

13.I have considered the rival submissions made by the learned counsel appearing for the appellants as well as the learned Public Prosecutor for the respondent/State.

14.As has been rightly pointed out by the learned counsel appearing for the appellants, there is no link expressly given by the prosecution in the charge sheet fixing that A1 and A8 had, in order to execute the conspiracy to eliminate the victim, gave directions or instructions, to the other accused, especially, A4, to eliminate the victim.

15.Prima facie, on perusing the charge sheet, though there is theory of conspiracy, also the appellants have been made for in the charge sheet filed by the prosecution, in view of no direct link of giving instructions to execute the said conspiracy, this Court is of the view that, the said lacunas can only be decided, as to whether A1 and A8 had been really involved in this conspiracy to eliminate the victim, only at the time of trial. However, since these appellants had been inside from 19.04.2017 and 24.04.2017 onwards and the earlier order passed by this Court as referred to above, dated 12.01.2018, was passed at the circumstances, where a bail application was moved by invoking Section 439 of the Code of Criminal Procedure, however, at that time, by way of additional charge sheet, the prosecution laid charges against the accused persons under the provisions of SC/ST Act and therefore, the learned Judge had refused to entertain the bail application, this Court is of the view that, since for the past eight months, the accused persons had been inside as pre-trial prisoners and in view of the lacunas prima facie pointed out in the charge sheet and considering the overall aspects and circumstances of these cases, this Court is inclined to pass the following orders:

"The appellants/A1 and A8 shall be enlarged on bail on the following conditions:

(a)that the appellants/A1 and A8 shall execute a bond for a sum of Rs.1,00,000/-(Rupees one lakh only) each with two sureties, out of which, one must be a Government surety, each for a like sum to the satisfaction of the learned II Additional Sessions Judge (Special Judge), Pondicherry, within a period of

two weeks from the date of receipt of a copy of this order.

(b)that the appellants on releasing on bail shall stay at Karaikal and report before the Karaikal Town Police Station, daily at 10.00 a.m., until further orders."

Accordingly, these Criminal Appeals are disposed of.

Sd/-

Assistant Registrar(cs IX)

//True Copy//

Sub Assistant Registrar

mps
To

- 1.The Special Judge,
II Additional Sessions Judge,
Pondicherry.
 - 2.The Principal Sessions Judge, Pondicherry
 - 3.The Inspector of Police,
Thirubuvanai Police Station,
Pondicherry
 - 4.The CBCID Police,
Pondicherry
 - 5.The Inspector
Karaikal Town Police Station,
Karaikal
 - 6.The Public Prosecutor(Pondicherry)
High Court Madras.
 - 7.The Superintendent of Police, Central Prison, Pondicherry
- +1cc to Mr.B.Balavijayan, Advocate SR.No.10675
+1cc to Mr.B.Mohan, Advocate SR.No.10453
+1cc to Government Pleader SR.no.10727

RSY(CO)
sm:13.2.2018

CrI.A.Nos.72&81 of 2018